Case 7:08-cv-00079-WCC Document 7 Filed 02/25/2008 Page 1 of 15

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UNITED STATES DISTRICT COURT OF THE STATE OF NEW YORK SOUTHERN DISTRICT OF NEW YORK FRED LOCKLARY,

Index No. 08 CIV. 0079

DOCTEDITIET,

RESPONSE TO RULE 26 DISCOVERY

Plaintiff,

-against-

TOWN OF NEW WINDSOR, MICHAEL C. BIASOTTI, Chief of Police of the Town of New Windsor Police Department, POLICE OFFICER STEPHEN L. BEREAN (Shield #132) and POLICE OFFICER JOHN A. MARTIN (Shield #124),

SIRS:

PLEASE TAKE NOTICE that the Defendant, TOWN OF NEW WINDSOR, MICHAEL C. BIASOTTI, Chief of Police of the Town of New Windsor Police Department, POLICE OFFICER STEPHEN L. BEREAN (Shield #132) and POLICE OFFICER JOHN A. MARTIN (Shield #124), by their attorneys the law firm of Barry, McTiernan & Moore, upon information and belief respond to Rule 26 Discovery as follows:

- A. Names, addresses and telephone numbers of each individual likely to have discoverable information: The following are individuals likely to have discoverable information and their last known addresses and telephone numbers, where available:
 - i) Fred Locklary, 1 Mullins Apartments, Newburgh, New York, 12550, 845-562-1766
 - ii) Grace Locklary, 1 Mullins Apartments, Newburgh, New York, 12550, 845-562-1766
 - iii) Daksha V. Bapodra, 3046 Route 9W, New Windsor, New York, 12553, 845-562-6373

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- iv) James Ray, 62 Union Avenue, New Windsor, New York, 12550, 845-565-8938
- v) Michael Green, 43 Bridge Street, Newburgh, New York, 12550, 914-561-3113
- vi) Stephn L. Berean, c/o Town of New Windsor Police Department, 555 Union Avenue, New Windsor, New York, 12553
- vii) John A. Martin, c/o Town of New Windsor Police Department, 555 Union Avenue, New Windsor, New York, 12553
- viii) Michael C. Biasotti, c/o Town of New Windsor Police Department, 555 Union Avenue, New Windsor, New York, 12553
 - ix) Denise Ray, 62 Union Avenue, New Windsor, New York, 12553
- B. The documents and tangible things including public records which may be used in the defense of this claim are: Records from the Town of New Windsor Police Department concerning the arrest of Fred Locklary which are annexed hereto. Defendant is currently not in possession of any written statements of the plaintiff. Records from the Town of New Windsor Justice Court.
 - C. Medical reports and authorizations: None.
 - D. **Experts**: At this time, these defendants have not obtained any expert witnesses.
 - E. Computation of Damages: Not applicable to these defendants.
- F. **Insurance Agreement**: The defendant, The Town of New Windsor, is insured by the Diamond State Insurance Company, c/o Network Adjusters, 850 Fulton Street, Framingdale, New York, 11735, policy number LBL0001474, policy limits \$1,000,000.00 per person, \$1,000,000.00 per occurrence, \$1,000,000.00 annual aggregate, subject to \$15,000.00 deductible.

PLEASE TAKE FURTHER NOTICE that the responding defendant reserves the right to

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amend and/or supplement the above responses up to and including the time of trial.

Dated: White Plains, New York February 25, 2008

Yours, etc.,

Robert C. McMahon (RM1533)
Barry, McTiernan & Moore
Attorneys for Defendants
TOWN OF NEW WINDSOR, MICHAEL C.
BIASOTTI, Chief of Police of the Town of
New Windsor Police Department, POLICE
OFFICER STEPHEN L. BEREAN (Shield
#132) and POLICE OFFICER JOHN A.
MARTIN (Shield #124)
55 Church Street
White Plains, NY 10601
(914) 946-1030

To:

Michael R. Scolnick, P.C. Attorneys for Plaintiff FRED LOCKLARY 175 Burrows Lane Blauvelt, NY 10913 (845) 354-9339

AFFIDAVIT OF SERVICE

STATE OF NEW YORK) ss.: COUNTY OF WESTCHESTER

LORI JACOBSON, being duly sworn, deposes and says: I am not a party to this action, am over 18 years of age and reside in Yonkers, New York.

That on February 25, 2008, a true copy of the annexed RESPONSETO RULE 26 **DISCOVERY** was served in the following manner:

By mailing the same in a sealed envelope, with postage prepaid thereon, in a post office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee(s) as indicated below:

Michael R. Scolnick, P.C. Attorneys for Plaintiff FRED LOCKLARY 175 Burrows Lane Blauvelt, NY 10913 (845) 354-9339

Sworn to before me this 25th day of February, 2008

Notary Public, State of New York

No. 4790758 Qualified in Westchester County Commission Expires January 31, 2010 (Rev 2-89)

NEW WINDSOR POLICE DEPARTMENT COMPLAINT REPORT

Page # 1								
Case Type	Jurisdiction			Case No.	1	nt No.		
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Case No. 05-01716

NEW WINDSOR POLICE DEPARTMENT COMPLAINT REPORT

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Details

OFFICER'S REPORT:

PO STEPHEN L. BEREAN

08/18/2005

0059 HRS.

WHILE ON PATROL ON RT 9W SOUTH IN THE AREA OF UNION AVENUE THIS OFFICER OBSERVED A GRAY CHEVROLET IMPALA TRAVELLING NORTHBOUND. IT WAS OCCUPIED BY TWO BLACK MALES. THIS OFFICER OBSERVED THIS VEHICLE MAKE A LEFT TURN FROM RT 9W ONTO UNION AVENUE WEST. UPON DOING THIS THE VEHICLE PASSED A RED LIGHT WHICH WAS FACING IN ITS DIRECTION OF TRAVEL. THIS OFFICER TURNED POLICE VEHICLE AROUND ONTO RT 9W NORTH AND ATTEMPTED TO STOP THIS VEHICLE. THIS VEHICLE WAS OBSERVED MAKING A RIGHT TURN INTO A DRIVEWAY OFF UNION UNION AVENUE. THIS OFFICER PROCEEDED WEST ON UNION AVENUE AND LOCATED THE VEHICLE IN THE DRIVEWAY AT 62 UNION AVENUE. THE TWO OCCUPANTS HAD GOTTEN OUT AND WERE STANDING AT THE FRONT DOOR OF THE RESIDENCE. THIS OFFICER STOPPED POLICE VEHICLE AND SPOKE WITH BOTH PARTIES. UPON SPEAKING WITH THE FIRST SUBJECT, MR. FRED LOCKLARY, HE ADVISED THAT THE VEHICLE IN THE

Case No. 05-01716

NEW WINDSOR POLICE DEPARTMENT COMPLAINT REPORT

Page # 3

DRIVEWAY WAS HIS WIFE'S CAR. THIS OFFICER DETECTED A STRONG ODOR OF AN ALCOHOLIC BEVERAGE COMING FROM HIS MOUTH ARE. HE ALSO HAD RED WATERED EYES AND WAS NOT SPEAKING CLEARLY. WHEN ASKED IF HE WAS DRIVING THE VEHICLE HE DENIED OPERATION. THIS OFFICER CALLED OFFICER MARTIN TO RESPOND FOR BACK UP. UPON HIS ARRIVAL THE SECOND SUBJECT WAS INTERVIEWED AT THE SCENE. MR. MICHAEL GREEN TOLD BOTH OFFICERS THAT MR. LOCKLARY WAS DRIVING AND THAT THEY WERE COMING FROM THE MOTEL (TRAVEL INN) ON RT 9W WHICH IS WHERE THIS OFFICER OBSERVED THEM LEAVING FROM INITIALLY. MR. LOCKLARY WAS INTERVIEWED AGAIN AND DENIED OPERATING THE VEHICLE. MR. GREEN WAS ADAMANT THAT MR. LOCKLARY WAS DRIVING THE VEHICLE AND AGREED TO GIVE A SWORN STATEMENT AS TO WHAT HAPPENED. MR. GREEN APPEARED TO BE SOBER AT THE TIME. OFFICER MARTIN WAS ABLE TO OBTAIN A WRITTEN STATEMENT FROM MICHAEL GREEN AT THE SCENE IMPLICATING MR. LOCKLARY AS THE DRIVER. MR. GREEN CAN ONLY READ AND WRITE THE ENGLISH LANGUAGE PARTIALLY. OFFICER MARTIN PREPARED THE STATEMENT BASED ON ORAL STATEMENT. MR. GREEN WAS READ BACK THE STATEMENT BY OFFICER MARTIN. MR. GREEN AGREED TO ITS CONTENTS AND WAS ABLE TO SIGN HIS NAME ON THE STATEMENT AS WITNESSED BY THIS OFFICER AND OFFICER MARTIN.

MR. JAMES RAY, THE OWNER OF 62 UNION AVENUE WAS INTERVIEWED. HE ASKED THIS OFFICER WHY THE DRIVER AND PASSENGER WERE AT HIS RESIDENCE KNOCKING ON HIS DOOR. BASED ON WRITTEN STATEMENT FROM MR. GREEN THIS OFFICER PLACED MR. LOCKLARY UNDER ARREST FOR DRIVING WHILE INTOXICATED AND HAVING A REVOKED DRIVER'S LICENSE. HE WAS PLACED INTO POLICE VEHICLE AND TRANSPORTED TO HEADQUARTERS FOR PROCESSING. WHILE DRIVING TO POLICE HEADQUARTERS THIS OFFICER COULD STILL DETECT THE ODOR OF AN ALCOHOLIC BEVERAGE COMING FROM HIS MOUTH AREA. HE WAS STILL SLURRING HIS SPEECH AND HE STATED THAT HE HAD BEEN DRINKING EARLIER AT A FRIEND'S HOUSE. HE STATED HE WAS DRINKING BEER. UPON ARRIVAL AT POLICE HEADQUARTERS MR. LOCKLARY WAS ADAMANT THAT HE WAS NOT DRIVING THE VEHICLE. HE STATED THAT HE WAS LAYING DOWN ON THE BACK SEAT AND THAT A FEMALE NAMED FELICIA STUBBS WAS OPERATING. HE STATED THAT HE SPOKE TO CLERK AT THE TRAVEL INN WHO SAW HIM AS THE PASSENGER. THIS OFFICER SPOKE WITH THE CLERK IDENTIFIED AS DAKSHA BAPODRA. SHE ADVISED THIS OFFICER THAT A MALE PARTY WAS OPERATING THE VEHICLE. SHE DESCRIBED THE MALE PARTY AS BLACK, HAVING A BALD HEAD, HEAVY STOCKY BUILD, AND WAS WEARING A BLACK SHIRT. THIS DESCRIPTION FIT MR. LOCKLARY AND NOT MR. GREEN.

UPON ARRIVAL AT POLICE HEADQUARTERS THIS OFFICER CONDUCTED VARIOUS FIELD SOBRIETY TESTS INCLUDING THE HORIZONTAL GAYZE NYSTAGMUS, THE FINGER COUNT,

Case 7:08-cv-00079-WCC Document 7 Filed 02/25/2008 Page 8 of 15

Case No. 05-01716

NEW WINDSOR POLICE DEPARTMENT COMPLAINT REPORT

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Details THE NUMBER COUNT, AND THE RECITAL OF THE ALPHABET. MR. LOCKLARY FAILED ALL BUT ONE OF THE TESTS. THE ONE PASSED WAS THE FINGER COUNT. BEFORE ASKED TO PERFORM THESE TESTS MR. LOCKLARY ADVISED THAT HE UNDERSTOOD THE DIRECTIONS BEFORE PERFORMING THEM. HE WAS ALSO ASKED IF HE HAD ANY PHYSICAL DISABILITES HE STATED THAT HE HAD A BAD BACK AND THAT A BULLET WAS LODGED THERE AS HE IS A COMBAT VETERAN FROM VIETNAM. HE WAS NOT ASKED TO PERFORM THE OTHER TWO STANDARD TESTS (WALK AND TURN AND ONE LEG STAND) BECAUSE OF THIS. MR. LOCKLARY WAS GIVEN READ HIS DWI AND MIRANDA WARNINGS AT POLICE HEADQUARTERS BY THIS OFFICER AT 0015 AND 0016 HRS. RESPECTIVELY. HE WAS GIVEN A BREATH TEST VIA THE DATAMASTER ON HIS OWN CONSENT TO DETERMINE THE ALCOHOL CONCENTRATION IN HIS BLOOD. A READING OF .11% WAS OBTAINED. MR. LOCKLARY WAS SUBSEQUENTLY CHARGED AND PROCESSED AT HEADQUARTERS. HE WAS CHARGED WITH DRIVING WHILE INTOXICATED AS A FELONY BASED ON A PRIOR CONVICTION FOR DRIVING WHILE INTOXICATED ON 04/23/2001 OUT OF THE CITY OF NEWBURGH JUSTICE COURT. HE WAS ALSO CHARGED WITH FELONY AGGRAVATED UNLICENSED OPERATION IN THE FIRST DEGREE AS HE IS REVOKED BASED ON SAME CONVICTION. HE WAS ALSO CHARGED WITH PASSING A RED LIGHT AND OPERATING WITHOUT FINANCIAL SECURITY. HE WAS ISSUED TRAFFIC SUMMONSES FOR ALL THESE CHARGES. HE WAS ISSUED AN APPEARANCE TICKET AND WAS RELEASED ROR TO RETURN ON 09/25/2005 IN TOWN COURT THE VEHICLE HE WAS OPERATING WAS IMPOUNDED AT THE SCENE. IT WAS TOWED BY EXPRESS TOWING. NO HOLDS PLACED ON VEHICLE. 221.

Associated Events
05-13446

Reporting/Investigating Officer
PO STEPHEN L BEREAN

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ate of New Fork	Date: 8-17-05
County of Orange	Time: 2320 his.
Town of New Windsor	Location: 62 Union Avenue
	New Winds 4, 249 12553
1 Michael Green.	Being duly sworn deposes and says,
that I am 48 years of age, born on	July 15 1957, and reside at
43 Bridge St City of Newburgh, as	
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MR. Green I am officer months of t	he Town of New Windsor Police Dept.
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. I cat me and Fred.	
a cubo coas driving the car?	
A. Fred was	
2 coly did the too of you run from H	ve Car and to the front ober of the house?
+ Ballanse use come here to VISi+ my I	barants. But we didn't run
- m m m	
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Macholl	
	PAGE 1 of 3
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INTE GASONEWBYONROO79-WCC	Document 7	Filed 02/25/2008 Page 13 of 15
COUNTY OF ORANGE	. •	TIME -
TOWN OF NEW WINDSOR		LOCATION -
Q Is there aruthing else yo	ou coish to t	ell me about this incident?
A. Nothats it. That's It.		The modern
@ Is everything you told!	methe truth	and to the best of your
Mondedge.		
A. Ves.		
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Class A misdemeanor pursuant to section 21	page(s) and the facts contained herein are true and and that making a false written statement is punishable as a 0.45 of the Penal Law of the State of New York.
Affirmed under penalty of perjury this 17th	day of <u>Aug</u> 2005
Subscribed and sworn to before me	day of Aug 2005 Signed: Maharl Sex
This 14th day of Aug, 20 05	,
ritle: Patrolman	Witness: Po Maria Witness: Styl S. Bun #137
· _	
	$_{\text{Page}}$ 3 $_{\text{of}}$ 3 $_{\text{Page(s)}}$

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UP-5.6 (7/83) New York State or Department of Nation Vehicles.	(19-3.6 (7/63) Now York State of Dispartment of Motor Vehicles
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Canal Marie Distriction (MA)	Last Name (Carlanders)
Planting and Street	Names and Seat M_ 11.45 Apt. Apt. No.
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